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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re D.T., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. D.T., Defendant and Appellant.	A133468 (Contra Costa County Super. Ct. No. J11-00838)

D.T. (appellant) appeals from a juvenile court's orders denying his motion to suppress evidence and placing him on probation for possession of marijuana (Health & Saf. Code, § 11357, subd. (c)). He contends: (1) the court erred in denying his motion to suppress; and (2) a probation condition requiring him to "not be on any school campus unless enrolled in that school" is unconstitutional and unreasonable. As set forth below, we affirm the orders as modified.

FACTUAL AND PROCEDURAL BACKGROUND

An original wardship petition was filed May 24, 2011, alleging appellant violated Health and Safety Code section 11359 by unlawfully possessing marijuana for sale. Appellant filed a motion to suppress evidence and the court heard the motion on July 27, 2011.

Pittsburg Police Officer Kyle Baker testified that at approximately 1:12 p.m. on April 1, 2011, he was on patrol duty in the El Pueblo housing community (El Pueblo),

which is owned by the Contra Costa Housing Authority and consists of approximately four street blocks. There are public streets running through El Pueblo but it is considered private property, with signs at all four entrances indicating trespassing is prohibited.

As Baker drove around in his patrol vehicle, he saw a plastic bottle "fly from the middle of" of a group of three black males, "indicating a violation, littering." Baker's partner and training officer, Officer Pearman, who was sitting in the passenger seat, confirmed he had seen the same thing. Baker asked Pearman whether he recognized anyone in the group as being residents of El Pueblo, and Pearman responded "no." This indicated to Baker that the males were "possibly trespassing," as Pearman was "[e]xtremely familiar" with the area and "literally knew the name[s] of everybody walking around and where everybody lives . . . ."

The officers exited the vehicle and walked towards the three males, and Baker asked them if he could speak to them. The males stopped and turned around, and the officers continued to walk towards them. Baker asked the males, one of whom was appellant, to sit down on the curb, and they complied. Baker asked them what they were doing in El Pueblo, and they responded they were walking through after having gotten their hair cut. Baker asked the males to identify themselves. An adult male provided written identification, and the two minors including appellant verbally identified themselves. Baker conducted a records check, which came back clear for all three males.

Baker asked the adult male if he could search his person, and the adult male consented. Baker searched the adult male for 30 to 45 seconds, then asked him to sit back down. Baker then asked appellant if he had anything illegal in his possession, and appellant responded, "no." When Baker asked appellant if he could search his person, appellant "stood up and he turned around[,] faced away from [Baker] and he put his hands out, arms out . . . which indicated to [Baker] consent to search his person."

Baker searched appellant's waistband, pockets, and pants and found a $5 bill, a $20 bill, and a cell phone. Pearman then picked up from the ground a "T-shirt or black-collared shirt" that appellant had been holding at the time Baker "had begun [his] contact with [appellant]." When Pearman picked up the shirt, the shirt was "right where [appellant] was sitting on the curb. It was directly behind him there," "one foot—one or two f[eet]" away.

Appellant was "standing on the street, . . . six inches to a foot away from the sidewalk, and the shirt was right on the sidewalk, right next to where he had been sitting." When Pearman unrolled the shirt, there was a transparent, "orange, unlabeled pill bottle with four individually packaged baggies containing a green leafy substance, consistent with marijuana, and there was also a plastic baggy that contained four other little packages of marijuana." A total of three to four minutes elapsed from the time Baker stopped the group until he arrested appellant.

The court denied the motion to suppress. It found the officers detained appellant when they asked or directed him to sit on the curb, but that the detention was not unduly prolonged. It further found that appellant consented to the search by standing up and raising his arms. Finally, the court stated, "did the scope of [appellant's non-verbal consent] extend to the shirt lying next to him? And I think, reasonably, that it did. I think it's a reasonable interpretation. And the container, given the facts of this case, that it belonged to him, it was a part of him, he just rolled it up, it was next to him. There is some dispute, certainly in the moving papers, as to whether . . . the minor had it in his hand at the time he asked. Resolv[ing] . . . that fact[] in favor of the minor, . . . that it wasn't on his person, I still think it's reasonable and within the scope of the consent given."

On September 20, 2011, the petition was amended to allege a violation of Health and Safety Code, section 11357, subdivision (c), possession of more than one ounce of marijuana, and appellant pleaded no contest to that charge. The court declared appellant a ward of the court and placed him on probation. The court ordered the following as conditions of probation: "He is to obey all laws and follow rules and orders of parent and probation officer. [¶] And do not be on any school campus unless enrolled in that school. [¶] Report to probation as directed and do not change place of residence without prior approval of probation officer. Report any change of address or telephone number to probation officer within five days. [¶] The minor is to be at his residence between the hours of 9:00 p.m. and 6:00 a.m., unless you are involved in some kind of work activity, or school activity, or you are with your mother or parents . . . or grandparent, if your mother says you can be with them." The court ordered appellant not to use or possess illegal drugs or alcohol, submit to alcohol and drug testing as directed by the probation officer, submit to search and seizure by

any peace officer at any time, with or without a warrant, complete 50 hours of community service, and attend counseling as directed by the probation officer, including a substance abuse program. The court ordered appellant's parents to participate in counseling as directed by the probation officer. Appellant did not object to any of the probation conditions.

DISCUSSION

1. Motion to Suppress Evidence

Appellant contends the trial court erred in denying his motion to suppress evidence. We disagree.

The Fourth Amendment guarantees the right to be free of unreasonable searches and seizures by law enforcement personnel. (U.S. Const., 4th Amend.; *Terry v. Ohio* (1968) 392 U.S. 1, 8–9; *People v. Maury* (2003) 30 Cal.4th 342, 384.) "The touchstone of the Fourth Amendment is reasonableness." (*Florida v. Jimeno* (1991) 500 U.S. 248, 250, citing *Katz v. United States* (1967) 389 U.S. 347, 360.) "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." (*Illinois v. Rodriguez* (1990) 497 U.S. 177, 183.) "Thus, we have long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so." (*Florida v. Jimeno, supra,* 500 U.S. at pp. 250-251.)

" 'The standard for measuring the scope of a suspect's consent . . . is that of "objective" reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect? . . .' [Citation.] Generally, the scope of a warrantless search is defined by its expressed object. [Citation.] A consensual search may not legally exceed the scope of the consent supporting it. [Citation.] Whether the search remained within the boundaries of the consent is a question of fact to be determined from the totality of circumstances. [Citation.] Unless clearly erroneous, we uphold the trial court's determination.' " (*People v. Crenshaw* (1992) 9 Cal.App.4th 1403, 1408 [consent to search a car for drugs extended to the officer's act of removing a doorpost vent with a screwdriver].)

A minor may move to suppress evidence obtained as a result of an unlawful search or seizure. (Welf. and Inst. Code, § 700.1.) "In reviewing the denial of a motion to suppress

evidence, we view the record in the light most favorable to the trial court's ruling and defer to its findings of historical fact, whether express or implied, if they are supported by substantial evidence. We then decide for ourselves what legal principles are relevant, independently apply them to the historical facts, and determine as a matter of law whether there has been an unreasonable search and/or seizure. [Citation.]" (*People v. Miranda* (1993) 17 Cal.App.4th 917, 922; see also *People v. Ingram* (1993) 16 Cal.App.4th 1745, 1750.)

Here, appellant was holding a shirt in his hand at the time the officers made contact with him. He consented to a search of his person, knowing the officers were trying to determine whether he had anything illegal in his possession. (See *Florida v. Jimeno*, *supra*, 500 U.S. at p. 251 ["[t]he scope of a search is generally defined by its expressed object"].) Appellant put down the shirt before standing up to be searched but did not move it away; rather, he left it "right where [he] was sitting on the curb," "directly behind him," only six inches to two feet away. "A suspect may of course delimit as he chooses the scope of the search to which he consents. But if his consent would reasonably be understood to extend to a particular container, the Fourth Amendment provides no grounds for requiring a more explicit authorization. 'The community has a real interest in encouraging consent, for the resulting search may yield necessary evidence for the solution and prosecution of crime, evidence that may insure that a wholly innocent person is not wrongly charged with a criminal offense.' [Citation.]" (*Id.* at p. 252.) Thus, although not required to specifically object to the search of the shirt, appellant's silence gave the officers additional reason to believe the scope of his consent extended to his shirt. Appellant asserts he implicitly excluded the shirt from the scope of his consent by leaving it on the ground before providing his consent. Viewed as a matter of reasonableness of the officers' perception and belief, however, the officers could have reasonably believed appellant was leaving the shirt on the ground because it was convenient to do so, as holding it in his hand as he raised his arms for the search would have interfered with the search. (See *People v. Miranda*, *supra*, 17 Cal.App.4th at p. 922 ["we view the record in the light most favorable to the trial court's ruling and defer to its findings of historical fact, whether express or implied, if they are supported by substantial evidence"].) Under the circumstances of this case, it was

objectively reasonable for the officers to believe that the general consent to search appellant's person included consent to search the shirt he was carrying at the time of contact, and which he left within reach during the search.

Appellant asserts the search was not reasonable because he was not holding the shirt at the time of the search. He cites to several federal cases in which courts analyzed whether a purse or bag fell within the scope of the definition of a "search of the person." In *United States v. Graham* (7th Cir. 1981) 638 F.2d 1111, 1114, for example, officers were authorized, pursuant to a warrant for a search of the defendant's person, to search a shoulder purse the defendant was carrying because "[c]ontainers such as these, while appended to the body, are so closely associated with the person that they are identified with and included within the concept of one's person." The cases on which appellant relies are inapposite because they involve purses and bags, which are separate "containers" that are used to carry items, in contrast to articles of clothing such as shirts, which are worn on the "person" and even more closely "associated with the person." (See *ibid*.) The cases do not support appellant's position that a shirt is a "container" that must be "appended to the body" at the time of the search for it to be included within the scope of a search of the person.[1]

2. Probation Condition

The juvenile court is authorized to "impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (Welf. & Inst. Code, § 730, subd. (b).) Because juveniles are deemed to be more in need of guidance and supervision than adults, and because a minor's constitutional rights are more circumscribed, a probation condition that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court. (*In re R.V.* (2009)

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[1] Appellant asserts a shirt is "much like a purse or shoulder bag. In fact, when the juvenile court ruled on the minor's motion to suppress, it characterized the shirt as a 'container' that was not 'on [the minor's] person.' " The record, however, is not clear whether the court was characterizing the shirt as a container or simply referring to the container that was found inside the shirt. In any event, the court's statement does not support appellant's position that a shirt, when not worn, becomes a container for which separate consent must be obtained.

171 Cal.App.4th 239, 246, 247.) However, a juvenile court's broad discretion in fashioning appropriate probation conditions is not boundless. (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910.) "Under the void for vagueness doctrine, based on the due process concept of fair warning, an order ' "must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated." ' [Citation.]" (*Ibid.*) "In addition, the overbreadth doctrine requires that conditions of probation that impinge on constitutional rights must be tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation. [Citations.]" (*Ibid.*)

Appellant contends the probation condition requiring him to "not be on any school campus unless enrolled in that school" is unconstitutionally vague and overbroad. First, he asserts it is vague because it lacks a knowledge requirement. He states he "may inadvertently walk onto a school parking lot or field, thereby unintentionally violating the condition." As the court noted in *People v. Barajas* (2011) 198 Cal.App.4th 748, 761-762, footnote 10 (*Barajas*), however, schools are "well marked as required by statutes with speed limit signs [citation], painted cross-walks labeled SCHOOL XING [citation], federal and state flags [citation], and notices of school hours [citation], as well as their often distinctive combinations of buildings, playgrounds and parking lots." Nevertheless, the Attorney General (respondent), relying on language used in *Barajas*, *supra*, which involved a similar probation condition, essentially concedes the point by proposing that we modify the condition to prohibit appellant from "knowingly" being on a school campus. We shall therefore modify the probation condition accordingly.

Second, appellant asserts the condition is vague because it does not adequately define the term "school." He asks, "does the condition forbid the minor from visiting only middle schools and high schools, or does it also encompass community colleges, colleges, universities, trade schools, military schools, elementary schools, and preschools?" He asserts, "Because the minor is forced to guess which types of school campuses he is prohibited from traveling to, the condition fails to provide him with fair notice and must be modified." It is apparent, however, that the term "school" as used in this probation condition refers to all schools of all levels as the term is customarily understood—from

kindergarten through community college and university. Any possible difficulty in determining whether other entities come within the definition is eliminated by inclusion of the "knowing" qualification.

Third, appellant asserts the condition is overbroad because it prohibits him from "entering any type of school campus where he is not enrolled," "is not limited to schools in any specific geographic area," and "does not allow the minor to be on school campuses for legitimate purposes (e.g., to attend a sporting event, music concert or employment fair). Nor can the minor enter school campuses with the permission of his parent, probation officer, or school authorities." Respondent proposes the condition be modified as follows: "Do not knowingly be on . . . a school campus during school hours unless enrolled or with prior administrative permission or prior permission of the probation officer." (Quoting *Barajas, supra,* 198 Cal.App.4th at p. 761.) Appellant replies that respondent's proposed modification "addresses many of [his] concerns" but is still overbroad because it "does not allow the minor to travel to school campuses with the permission of his parent."

Although appellant has framed this as a constitutional issue, his request that we narrow the condition to address his specific concerns requires consideration of his particular circumstances and is not a facial constitutional attack that may be considered for the first time on appeal. (*In re Sheena K.* (2007) 40 Cal.4th 875, 885 [forfeiture doctrine applies if the objection to an unreasonable probation condition is "premised upon the facts and circumstances of the individual case"].) " ' "Traditional objection and waiver principles encourage development of the record and a proper exercise of discretion in the [juvenile] court." [Citation.]' [Citation.]" (*Id.* at p. 889.) As noted, appellant did not object to the challenged probation condition below. Thus, we decline to address in the first instance whether the condition should be modified as requested by appellant. We shall, however, order modification as proposed by respondent, which appellant acknowledges "addresses many of [his] concerns." If appellant believes further modification is necessary, he may seek such modification in the juvenile court. (See *In re Francis W.* (1974) 42 Cal.App.3d 892, 897 [at any time during the probationary period the juvenile court "may change,

modify or set aside any order it has previously made"]; see Welf. & Inst. Code, §§ 775, 776, 778].)[2]

DISPOSITION

The challenged probation condition is modified as follows: "Do not knowingly be on any school campus during school hours unless enrolled or with prior administrative permission or prior permission of the probation officer." In all other respects, the judgment is affirmed.

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McGuiness, P.J.

We concur:

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Pollak, J.

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Jenkins, J

[2] Appellant also contends the probation condition must be stricken or modified as unreasonable under *People v. Lent* (1975) 15 Cal.3d 481, 486, which sets forth a three-part test for determining the reasonableness of probation conditions. As noted, however, the forfeiture rule applies to challenges to probation conditions that do not present pure questions of law and involve alleged defects that are only apparent or correctable by reference to the facts. (*In re Sheena K.*, *supra*, 40 Cal.4th at pp. 885-889.) We therefore decline to address the reasonableness of the challenged probation condition.